

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	Case No. 99A00006
)	
HAYS/CATALINA ROOFING & SUPPLY,)	Marvin H. Morse
INC. dba HAYS CATALINA ROOFING,)	Administrative Law Judge
Respondent.)	

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT
(April 6, 1999)

I. Procedural History

On December 10, 1996, the Immigration and Naturalization Service (INS or Complainant) served a Notice of Intent to Fine on Hays Catalina Roofing Company. By letter dated December 19, 1996, Charlotte Jump (Jump) timely requested a hearing on behalf of Hays/Catalina Roofing & Supply, Inc. d/b/a Hays Catalina Roofing (Respondent). On October 27, 1998, Complainant filed its three Count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint seeks a total civil money penalty of \$12,490.

Count I alleges that Respondent failed to prepare, retain, and/or make available for inspection the Forms I-9 for 16 individuals in violation of 8 U.S.C. § 1324a(a)(1)(B), at a total penalty of \$4,190 (\$400 per violation for three individuals and \$230 per violation for thirteen individuals).

Count II alleges that Respondent failed to ensure that 32 individuals properly completed section 1 of the Forms I-9 in violation of 8 U.S.C. § 1324a(a)(1)(B), at a total penalty of \$6,700 (\$300 per violation for three individuals and \$200 per violation for twenty-nine individuals).

Count III alleges that Respondent failed to properly complete section 2 of the Forms I-9 for eight individuals in violation of 8 U.S.C. § 1324a(a)(1)(B), at \$200 per violation, a total penalty of \$1,600.

On October 29, 1998, the Office of the Chief Administrative Hearing Officer (OCAHO) issued a Notice of Hearing (NOH), attaching the Complaint. On November 30, 1998, the NOH

and Complaint sent by certified mail to Hays Catalina Roofing at 115 West Plata, Tucson, AZ, 85705-9999, was returned to OCAHO by the Postal Service as "Unclaimed."

On December 15, 1998, by my direction as the assigned Administrative Law Judge (ALJ),¹ the NOH and Complaint were served personally on Jump at 11391 W. Park Road ² on behalf of Respondent, according to the Certificate of Service signed by Monique L. Hirko, INS Special Agent. The NOH at paragraph 2 advised Respondent that its "Answer must be filed within thirty (30) days after receipt of the attached Complaint." To date, Respondent has not filed an Answer to the Complaint.

On January 29, 1999, Complainant filed a Motion for Default Judgment.

On February 2, 1999, I issued an Order "to advise Respondent that a response to Complainant's motion will be considered timely if filed **no later than Monday, February 22, 1999.**" The Order explained that Respondent's filing should "include: (1) an Answer to the complaint and an explanation as to why Respondent failed to file an Answer within the original time allowed; and (2) why a judgment of default should not be entered against [Respondent]." A copy of the Rules of Practice and Procedure of this Office was provided for Respondent's convenience. Finally, the Order cautioned that "[f]ailure to respond to this Order may result in an entry of default judgment." The Order was addressed to Respondent at HCR 2 Box 558, Tucson, AZ 85735, in two copies, one each by first class mail and by certified mail, return receipt requested. On March 6, 1999, the copy sent by certified mail was returned by the Postal Service as "Unclaimed." The copy sent by first class mail has not been returned. As of April 6, 1999, Respondent has not filed a response nor Answer.

II. Discussion

A. Service of Process was Effected

Whether Respondent is in default depends upon whether it received proper notice of the Complaint, *i.e.*, was the NOH, Complaint, and Order properly served on Respondent. As discussed below, Respondent was properly served with the NOH, Complaint, and Order and is in default.

¹ See 28 C.F.R. § 68.3(c) (1998) ("in circumstances where the Office of the Chief Administrative Hearing Officer [(OCAHO)] or the Administrative Law Judge [(ALJ)] encounter difficulty with perfecting service[,], [OCAHO or the ALJ] may direct that a party execute service of process.").

² A January 7, 1999, letter from Complainant's counsel addressed to OCAHO confirms personal service of the NOH and Complaint upon Respondent on December 15, 1998, but identifies "HCR 2 Box 558, Tucson, AZ 85735" as the location of service.

Under the pertinent rules of practice and procedure, 28 C.F.R. Part 68, service of the NOH, Complaint, and Orders shall be made by OCAHO or the ALJ either:

- (1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or
- (2) By leaving a copy at the principal office, place of business, or residence of a party; or
- (3) By mailing to the last known address of such individual, partner, officer, or attorney.

28 C.F.R. § 68.3(a) (1998). “Service of complaint and notice of hearing is complete upon receipt by addressee.” 28 C.F.R. § 68.3(b) (1998). In contrast, service of the Order is complete upon mailing. 28 C.F.R. § 68.3(a) (1998); 28 C.F.R. § 68.6(a) (1998).

Attached to the Complaint as initially filed with OCAHO is an INS letter dated October 22, 1998, which states, that “Respondent may be served with a copy of the Complaint and Notice of Hearing at the following address:

Charlotte Jump, Manager
Hays Catalina Roofing
115 W. Plata
Tucson, AZ 85705
(520) 884-9588.”

As previously noted, the OCAHO NOH, attaching the Complaint, sent by certified mail to this “115 W. Plata” address was returned as “Unclaimed.” The Certificate of Service attached to Complainant’s Motion for Default Judgment certifies service upon:

Charlotte Jump, President
Hays Charlotte Catalina Roofing, Inc.
HCR 2 Box 558
Tucson, Arizona 85735.

The ALJ Order was sent to this “HCR 2 Box 558” address by certified and first class mail. Also previously noted, the certified mail copy was returned “Unclaimed,” and the first class mail copy has not been returned.

Absent evidence to the contrary, I conclude that:

- (1) Jump is authorized to receive service of process for Respondent as an officer of Respondent or as a registered agent for service of process of Respondent per 28 C.F.R. § 68.3(a)(1); and
- (2) the address “HCR 2 Box 558[,] Tucson, Arizona 85735” is deemed to be Respondent’s “principal office” or “place of business” per 8 C.F.R. § 68.3(a)(2) and Jump’s “last known address” per 28 C.F.R. § 68.3(a)(3).

When Jump was personally served with the NOH and Complaint on December 15, 1998,³ service of the NOH and Complaint were properly effected upon Respondent through Jump who is either its agent or officer. Proper service of the NOH and Complaint, therefore, were effected on Respondent under 28 C.F.R. § 68.3(b). Because the first class mail copy of the Order addressed to Respondent was not returned by the Postal Service, it is deemed to have been received by Respondent. Service of the Order upon Respondent by first class mail was, accordingly, effected under 8 C.F.R. § 68.3(a)(3). Thus, Respondent received proper notice of the NOH, Complaint, and Order.

B. Respondent is in Default

Respondent’s failure to file a timely Answer to the Complaint constitutes a waiver of Respondent’s right to contest the allegations set forth in the Complaint and, in this instance, results in the entry of a judgment by default. 28 C.F.R. § 68.9(b) (1998). The NOH served on Respondent December 15, 1998, cited that “an Answer must be filed within thirty (30) days,” and the Order issued February 2, 1999, stated that “an Answer to the complaint and an explanation as to why Respondent failed to file an Answer within the original time allowed” would be considered timely if filed by February 22, 1999. As of April 6, 1999, Respondent has filed nothing. Because Respondent received proper notice and failed to Answer the Complaint, to respond to Complainant’s Motion, and to reply to the Order, an entry of default judgment is entered against Respondent in accordance with 28 C.F.R. § 68.9(b). Additionally, Respondent is deemed to have abandoned its request for hearing, having not responded to the Order. 28 C.F.R. § 68.37(b)(1) (1998).

C. Civil Penalty Assessment is Within Statutory Parameters

The Complaint demands a civil money penalty in the amount of \$12,490. Under 8 U.S.C. § 1324a(e)(5), Respondent is required “to pay a civil penalty in an amount of not less than \$100

³ Although Complainant’s Certificate of Service showing personal service of the NOH and Complaint on December 15, 1998, does not contain a signature on behalf of Respondent, service as attested by the Special Agent, is deemed complete and received by Respondent through Charlotte Jump in accordance with 28 C.F.R. § 68.3(b).

and not more than \$1,000 for each individual with respect to whom each violation occurred.” The penalties sought by Complainant, between \$200 and \$400 per individual violation, are within the statutory limit. Since Respondent defaulted and failed to contest the penalties demanded, I find the total fine in the amount of \$12,490 to be lawful.

III. Findings of Fact and Conclusions of Law

- (1) Charlotte Jump may receive service of process for Respondent as its registered agent or corporate officer;
- (2) Respondent’s last known mailing address is: HCR 2 Box 558, Tucson, Arizona 85735;
- (3) Respondent was properly served with the Notice of Hearing and Complaint on December 15, 1998;
- (4) Respondent was properly served with the February 2, 1999, Order by first class mail;
- (5) Respondent is in default, having not responded to the Notice of Hearing, Complaint, and Order;
- (6) Respondent abandoned its request for hearing;
- (7) Respondent violated 8 U.S.C. § 1324a(a)(1)(B) as set forth in Counts I, II, and III of the Complaint;
- (8) Respondent is ordered to pay Complainant a total civil money penalty of \$12,490; and
- (9) Complainant’s Motion for Default Judgment is granted.

SO ORDERED.

Dated and entered this 6th day of April, 1999.

Marvin H. Morse
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Order Granting Complainant's Motion for Default Judgment were mailed first class and a copy was sent certified mail, return receipt requested as indicated, this 6th day of April, 1999 addressed as follows:

Counsel for Complainant

Virginia A. Vasquez, Esq.
Immigration and Naturalization Service
P.O. Box 25158
Phoenix, AZ 85002

Dea Carpenter, Esq.
Immigration and Naturalization Service
425 "I" Street, NW, Room 6100
Washington, DC 20536

Respondent

Charlotte Jump, President (Certified Mail #Z-189-961-586)
Hays Charlotte Catalina Roofing, Inc.
HCR 2 Box 558
Tucson, AZ 85735

Charlotte Jump, President (Certified Mail #Z-189-961-588)
Hays Charlotte Catalina Roofing, Inc.
11391 W. Park Road
Tucson, AZ 85735

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